



1854 Treaty Authority

4428 HAINES ROAD • DULUTH, MN 55811-1524
218.722.8907 • 800.775.8799 • FAX 218.722.7003
www.1854treatyauthority.org

December 22, 2016

Erik Smith
Minnesota Pollution Control Agency
520 Lafayette Rd. North
St. Paul, MN 55155

Re: Public notice for U.S. Steel Minntac tailings basin National Pollutant Discharge Elimination System (NPDES) / State Disposal System (SDS) Permit MN0057207

Dear Mr. Smith,

The 1854 Treaty Authority would like to provide comments on the draft NPDES/SDS permit and fact sheet for the U.S. Steel Minntac tailings basin water permit reissuance. The 1854 Treaty Authority is an inter-tribal resource management agency governed by the Bois Forte Band of Chippewa and Grand Portage Band of Lake Superior Chippewa. The organization is charged to preserve, protect, and enhance treaty rights and resources in the 1854 Ceded Territory. The 1854 Treaty Authority submits these comments with the understanding that each band may submit comments on their own behalf.

It is our understanding that the current permit for the facility expired in 1992. Over the past approximately twelve years, we have remained interested and engaged in the process to update the permit to come into compliance with applicable water quality standards. Of primary interest to us are impacts to the resources of the 1854 Ceded Territory where the exercise of treaty rights occurs. Sandy and Little Sandy lakes (Twin Lakes) are located immediately downstream of the Minntac tailings basin. These lakes historically contained good wild rice crops, and were utilized by both tribal and non-tribal rice harvesters. Since the tailings basin began operations in the late 1960s, wild rice abundance has significantly declined in the lakes and only some individual plants have been found in recent surveys. Discharges from the tailings basin have likely impacted the lakes due to changes in water quality (sulfate and other constituents) and perhaps water quantity.

In addition to impacting the Twin Lakes, it should be noted that the Sand River system ultimately drains into Pike Bay of Lake Vermilion through the Pike River. This is an important fishery to the Bois Forte Band with high consumption rates of fish from this portion of the lake. Sulfate is thought to play a role in methylation of mercury, which may be a health concern for populations consuming diets high in fish.

The largest issue that stands out in reviewing the documents is the proposed schedule of compliance. The draft permit essentially talks about more evaluation, and little detail or timelines

A consortium of the Grand Portage and Bois Forte Bands of the Lake Superior Chippewa

are provided for implementation of activities and ultimately compliance with water quality standards. The schedule includes:

- Investigation Workplan (30 days after permit)
- Basin Treatment Methods Study Plan (within 13 months of permit issuance)
- Deep Seepage Final Compliance Plan (within 25 months of permit issuance)
- Final Plans and Specifications (within 37 months of permit issuance)
- begin to implement the mitigation plan and/or initiate construction (within 49 months of permit issuance)

A schedule of compliance should outline a period of time to comply with water quality standards, but the proposed timeline does not accomplish this. The draft permit indicates that the permittee (not MPCA as the regulating agency) is to specify by month 37 the dates by which final compliance limits will be met for all pollutants and how those limits will be met.

Presumably, this would be a combination of further lowering basin pollutants and treatment technologies. Adding to the uncertainty of the permit, *beginning* implementation or *initiating* construction of any necessary water treatment within 49 months are not specific endpoints with a completion date. More detail and explicit outcomes (specific actions, compliance limits, completion dates, etc.) are needed in the permit and schedule of compliance. Other schedules of compliance (with revisions and extensions) have been in place at the facility for many years to further evaluate issues and determine solutions. The draft permit appears do to more of the same, lacking any “teeth” for implementation of strategies to comply with water quality standards. The proposed schedule begs the question if appropriate permitting will be any further ahead in five years or even in ten years, and the timeline for compliance continues to be unknown. Issues have been ongoing for decades and it is time to act and comply with standards.

The purpose of the additional evaluation is to identify feasible technologies for non-mechanical or mechanical treatment to reduce the concentration of sulfate within the tailings basin to 800 mg/L within five years of permit issuance, and 357 mg/L within ten years from permit issuance, or in the shortest reasonable period of time. However, this would only meet the sulfate drinking water standard (250 mg/L) at the property boundaries and does not address the existing wild rice sulfate standard (10 mg/L). Further, the language (“or in the shortest reasonable time”) implies that ten years is not a hard deadline to meet this sulfate threshold in the tailings basin and it may be even longer. The proposed schedule of compliance does not get the facility in compliance with water quality standards.

No matter how discharge is defined, a discharge is occurring to both the Sand River and Dark River sides of the tailings basin. We disagree with the MPCA determination that seepage discharges are not subjected to NPDES permit requirements. It is acknowledged that seepage is occurring and causing exceedances of water quality standards in surface water and groundwater in a broad area surrounding the basin, but the draft permit does not address this discharge especially in relation to wild rice. On the Sand River side, wild rice has essentially been lost in the Twin Lakes as previously mentioned. The seep collection system installed in 2010 has not effectively stopped all discharges, with elevated levels of several constituents (hardness, total dissolved solids, specific conductance, sulfate) demonstrated in the system. Under a cooperative project between the Bois Forte Band and U.S. Steel, a monitoring program occurred in the Twin Lakes from 2010-2014. The 1854 Treaty Authority conducted the work on behalf of the Bois Forte Band under this agreement through 2014, and has continued monitoring work in 2015-

2016 on its own initiative when the cooperative project was not continued. A primary focus of the monitoring was to document water quality, with monthly sampling occurring May through October each year 2010-2014, and bimonthly (June, August, October) in that period in 2015-2016. A sampling point at the Sand River inlet to Little Sandy Lake is identified as Twin1. Average sulfate concentrations from this sampling, with ranges in parentheses, for each year at Twin1 are listed below:

- 483 mg/L (360-661) in 2010
- 357 mg/L (208-561) in 2011
- 207 mg/L (137-275) in 2012
- 355 mg/L (215-650) in 2013
- 301 mg/L (180-419) in 2014
- 460 mg/L (386-590) in 2015
- 289 mg/L (217-347) in 2016

A report entitled "Sandy Lake and Little Sandy Lake Monitoring (2010-2016)" has been shared with the MPCA and summarizes all monitoring information.

The sulfate levels in the Twin Lakes are elevated from the Minnesota water quality standard of *"10 mg/L, applicable to water used for production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels"* (Minnesota Rules, part 7050.0224, subp. 2). The approach of the draft permit is to ignore this existing standard (a potential violation of the Clean Water Act), and deal with it if/when revisions to the standard are completed. The permit states that "if rulemaking designates any water body downstream from the tailings basin as a water to which the wild rice beneficial use applies, the Permittee shall submit an application for permit modification to conduct a reasonable potential analysis and incorporate any necessary effluent limit(s) to protect wild rice within 90 days of the rule being filed with the Secretary of State." Besides disregarding the existing standard, the permit calls for more evaluation and no timeline for compliance even when a revised standard is in place. The MPCA has made a preliminary determination that the wild rice standard will apply in the Twin Lakes (at the inlet to Little Sandy Lake), so the permit should address this water quality standard.

The draft permit includes limits and monitoring requirements in an interim period, which will be ongoing and is not defined since the schedule of compliance includes no date. In this indefinite period, no limits are imposed for sulfate and many other parameters and only monitoring is required. Limits and monitoring requirements in a final period, presumably if compliance with water quality standards is attained, are also not defined with a date. Surface water monitoring point SW001 (Sand River at Highway 53) includes monitoring only for sulfate. We would like to note that wild rice is found downstream of this point, and the sulfate water quality standard should apply. It is our understanding that this will theoretically be met if the upstream point SW005 (Sand River inlet to Little Sandy Lake) is in compliance with this standard. However, although the draft permit includes monitoring for sulfate at SW005 in the interim period, it does not include any mention of sulfate (a limit or monitoring only) at SW005 in the final period. This point, or even further upstream at SW007 at Admiral Lake, should be the point of compliance. Once again, the permit must address the wild rice water quality standard, and the concern is when or if compliance will occur given the lack of detail in the schedule of compliance.

To satisfy a Special Condition under a United States Army Corps of Engineers Wetland Permit (2011-00823-JCB), U.S. Steel must complete and implement a Twin Lakes Wild Rice Restoration Opportunities Plan. The permit states that the plan shall include: "The development of a five-year wild rice restoration and monitoring program for those areas of the Twin Lakes that show the greatest potential for restoration based on best information available in the time frame allowed for submitting its report." The first full year of the project was completed in 2014, and U.S. Steel submits annual reports summarizing activities to the Army Corps. Actions are needed in the Twin Lakes to restore conditions (water quality, sediment quality, water depth, etc.) favorable for wild rice growth. The restoration work should meet the requirements and intent outlined in the Army Corps permit, with the goal to restore wild rice in the Twin Lakes. However, the draft MPCA permit does not address or support this restoration work, specifically water quality and quantity requirements in relation to wild rice.

On the Dark River side of the tailings basin, the draft permit makes no mention of wild rice. However, wild rice has been reported in Dark Lake and the information has been previously shared with MPCA. Wild rice was identified in Dark Lake on 7/30/2012 during a survey by the Minnesota Biological Survey. Field crews from the University of Minnesota also identified wild rice during visits on 7/10/2013 and 9/5/2013. Under an effort coordinated by the Great Lakes Indian Fish & Wildlife Commission, wild rice was observed on 7/31/2016 and photos are available. The Minnesota Department of Natural Resources maintains a list of wild rice waters in the state, and Dark Lake has been included. Since Dark Lake supports wild rice, the appropriate sulfate standard should apply. The draft permit includes a surface water monitoring point SW003 (Dark River at County Road 668) upstream of Dark Lake with a final compliance level of 525 mg/L sulfate. This will not allow for compliance with the wild rice standard in Dark Lake, and we suggest that a compliance point for sulfate in the Dark River at its entrance to Dark Lake should apply.

The exercise of treaty rights is guaranteed by agreement with the United States. The federal government and its agencies have a trust responsibility to protect these rights and the resources on which they are based. Although the USEPA has delegated a NPDES water quality program to the MPCA, the USEPA retains oversight and still maintains its trust responsibility to the bands. This and other industrial projects can have significant impacts on treaty rights and related resources, and we will continue to look towards federal and state regulators to ensure compliance with environmental standards.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Darren Vogt". The signature is fluid and cursive, with the first name "Darren" and last name "Vogt" clearly distinguishable.

Darren Vogt
Environmental Director

CC: Kevin Pierard, Krista McKim – USEPA